



RESOLUTION 21-03

A RESOLUTION OF THE NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION UPDATING THE MANAGEMENT PLAN FOR THE LAPORTE COUNTY REVOLVING LOAN FUND

Whereas, the Northwestern Indiana Regional Planning Commission (hereafter referred to as “The Commission”) operates a Revolving Loan Fund for La Porte County under the Economic Development Administration (EDA) of the U.S. Department of Commerce; and

Whereas, the Commission adopted certain updates to the Management Plan for the LaPorte County Revolving Loan Fund (hereafter referred to as “The LaPorte County RLF”) on May 19, 2016 in Resolution 16-19; and

Whereas, the Economic Development Administration (EDA) requires five-year updates to Management Plans for Revolving Loan Fund programs; and

Whereas, the LaPorte County RLF Board approved and adopted updates to the Plan at their meeting of February 3, 2021 by unanimous vote; and

Whereas, the EDA subsequently approved and accepted these updates to the Laporte County RLF Management Plan on February 12, 2021;

Now, Therefore Be It Resolved that the Commission approves the required five-year update to the Management Plan for the LaPorte County Revolving Loan Fund, as attached to this resolution.

Duly adopted by the Northwestern Indiana Regional Planning Commission this 18th day of March 2021.



George Topoll
Chairperson

ATTEST:



Richard Hardaway
Secretary

LaPorte County RLF Management Plan – Update Recommendations

Due by March 2021

Comprehensive Economic Development Strategy (CEDS)

- Update to include Economic Development District designation.

Economic Adjustment Overview

- Added more information from Bert and Clarence.

Application Fee

Updated language to: “will be determined based on contracted costs for the preparation of Credit Memo and Credit Report.” Removed the \$200 application fee requirement. (page 16)

Loan Servicing Procedures

Repayment

- Added language: If partial payment is received, the payment will first be applied to the interest.
- Add language in Loan Closing Agreement Letter - Repayment section.

Conflict of Interest (language added by EDA)

Replace existing language with EDA required language:

EDA requires inclusion of the following:

- 1) Definitions.
 - a) An “Interested Party” is any officer, employee or member of the board of directors or other governing board of Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of Recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. An Interested Party also includes the Interested Party’s “Immediate Family” (defined as a person’s spouse or partner in a domestic relationship, parents, grandparents, siblings, children and grandchildren, but not distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the Interested Party by law or through a business arrangement.
 - b) A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party’s personal or financial interests or there is an appearance that an Interested Party’s objectivity in performing his or her responsibilities under the Project is impaired.
 - c) An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance, services, or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.
- 2) Conflicts of Interest Rules.

Recipient must adhere to EDA conflicts of interest rules set forth at 13 CFR § 302.17, including the following rules specific to RLFs:

- a) An Interested Party of Recipient shall not receive, directly or indirectly, any personal or financial benefit resulting from the disbursement of RLF loans. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward.
 - b) Recipient shall not lend RLF funds to an Interested Party.
 - c) Former board members of Recipient and members of their Immediate Family shall not receive a loan from the RLF for a period of **two years** from the date that the board member last served on the board of directors.
- 3) Duty to Disclose.
Recipient must, in a timely fashion, disclose to EDA in writing any actual or potential conflict of interest.
- 4) Written Standard of Conduct.
- a) Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest or personal gain in the administration of this RLF Award.
 - b) Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. See Section K, Other EDA Requirements, Subsection 4. Codes of Conduct and Sub-Award, Contract and Subcontract Provisions, Subsection b), Competition and Codes of Conduct for Subawards.

Delinquency Management

If defaults have occurred and are not cured in a reasonable amount of time, actions can be taken prior to restructuring loan agreements and pursuing legal action to recover the investment. NIRPC staff **and/or contracted service** will stay in close contact with the business to monitor activity and be immediately aware of further deterioration. Possible activities include:

- Increase financial reporting
- Require monthly cash flow reconciliation, such as:
 - The borrower shall submit financial statements for the business and any individuals providing a personal guarantee for the loan. Financial statements should be dated within 90 days of the payment default.
 - The financial statements should be analyzed to determine the borrower's ability to repay the debt based on its current financial condition. The cash flow of the business is the primary source of repayment; however, the liquidity of the business, excess cash flow of the personal guarantors, and liquidity of the personal guarantors should also be considered.
 - If the cash flow of the business, cash flow of the personal guarantors, or liquidity of the business or personal guarantors are determined to be sufficient to make ongoing loan payments, no additional alterations should need to be done to the loan agreement and repayment schedule.
 - If the cash flow of the business, cash flow of the personal guarantors, or liquidity of the business or personal guarantors is determined to be insufficient to continue with the current debt repayment schedule, further action should be taken.
- Hold monthly meetings with management
- Attend meetings of the board of directors

Default Loans: Any loan that is in arrears up to 90 days is considered to be a defaulted loan. Late penalty requirements will follow what is stated in the promissory note and/or loan agreement. Under default all loan proceeds must be immediately repaid or default proceedings will be initiated. Security items will be sold, and proceeds used to recover loan amounts outstanding, legal fees, and other costs of recovery.

If a loan should become delinquent, the following procedures will occur: Telephone contact will be made 10 days after the due date.

- First notice of delinquent payment will be sent 15 days after the due date.
- Second notice will be sent 30 days after the due date.
- Third notice will be sent 60 days after the due date.
- Fourth notice will be sent 75 days after the due date. A certified, return receipt notice will be sent. During the first 75 days of delinquency, written and oral communication, as well as site visits, will be utilized to resolve the delinquency. Every effort will be made through personal contact to resolve the delinquency.
- After 90 days of delinquency, a loan due demand notice will be sent by legal counsel. If after 90 days a delinquency still exists, and the loan has not been renegotiated or brought current, the loan may be declared in default. NIRPC may immediately commence procedures to recover the borrower's security. No loan modification will be approved unless it can be demonstrated that modification will improve the borrower's ability to repay the loan.

Any recipient proven guilty of discrimination in employment practices or determined to have used discriminatory practices in hiring shall be in default and subject to repay all loan funds immediately. Illegal business transactions or illegal business practices by the recipient may be cause for immediate recall of loan funds.

Restructuring of Loans: If the cash flow of the business is inadequate to make the scheduled payments, it may be necessary to alter the terms of the note in order to cure defaults. If there is no need to formally cure defaults, payment terms may be reached without amending the notes. Restructuring of loans include but are not limited to interest rate amendments, maturity date extensions, or added balloon payment. The following steps can be taken into consideration:

1. Determine if the cash flow problem is a short-term issue or a long-term issue affecting the viability of the company. If it is determined that the cash flow issue is a long-term situation, liquidation of the collateral should be considered. If the issue is determined to be short-term in nature, loan modification is appropriate.
2. Determine a solution that best resolves the short-term cash flow situation. These solutions include but are not limited to the following:
 - a. Re-amortizing the note over a longer period of time to decrease the monthly payment amounts
 - b. Allowing a deferral of principal or principal and interest for a period of time to allow the borrower reprieve from payments. At the end of the deferral period, the note would be re-amortized over the original term of the note or over a longer term if deemed necessary for repayment
 - c. A reduction of interest rate can be considered, though this is unlikely to resolve a cash flow issue
 - d. If allowed in the original note, a default interest rate may be enforced during the loan modification
3. Once the appropriate course of action is determined, a modification of the note should be prepared and executed. All collateral documents, including mortgages, UCC filings, and personal guarantees should be extended to match the new maturity date, if applicable. A new amortization schedule for the note should be provided to the borrower.

4. The borrower should be required to submit quarterly financial statements so ongoing repayment ability can be monitored.

All loan modifications must be reviewed and approved by the LaPorte County RLF Managing Board. Terms and repayment schedules will be defined and agreed upon by the Board.

Economic Development Administration Reporting (*Revised with EDA language*)

NIRPC will comply with all EDA reporting requirements. As part of this reporting NIRPC will certify to EDA that the Regional RLF is operating in accordance with the applicable Regional RLF Management Plan.

Sections added by EDA:

Allowable Cash Percentage

Effective Jan. 2, 2018, EDA replaced the Capital Utilization Rate of 25 percent with region-specific Allowable Cash Percentage (ACP) that is updated annually. The ACP is the average cash available for RLFs in the Chicago EDA region and is used for risk rating RLFs according to the Risk Analysis System.

Lending activity will be managed so that the cash available for lending is less than the current ACP in effect for the Chicago Region. However, if the Cash Available for Lending is greater than 50% of the RLF Capital Base for 24 consecutive months, EDA may take action to disallow the persistent excess cash.

Audits

NIRPC is required to obtain an annual audit of its RLF program in accordance with 2 CFR Subpart F and the Compliance Supplement, which is appendix XI to 2 CFR part 200, as applicable.

NEW - Environmental Section

- The RLF Administrator with the assistance of appropriate staff, shall assess the significance of all environmental impacts of activities to be financed in compliance with the National Environmental Policy Act of 1969 and other Federal environmental mandates, as per the Assurances (SF 424D as revised) executed with the Economic Development Administration. No activity shall be financed which would result in a significant adverse environmental impact unless the impact is to be mitigated to the point of insignificance. When necessary to ensure compliance, any required mitigation shall be made part of the loan conditions.
- No project shall be approved which would result in the alteration of or have an adverse impact on any wetland without prior consultation with the U.S. Department of the Interior, Fish and Wildlife Service, and, if applicable, obtaining a section 404 permit from the Army Corps of Engineers.
- Consistent with E.O. 11988, no project shall be approved which would result in new above ground development in a 100-year flood plain. This determination will be made by reviewing the proposed development against FEMA Flood Insurance Rate Maps.
- The State Historic Preservation Officer, (SHPO) shall be notified of each loan proposal that involves significant new construction or expansion and asked to submit comments on the effect of the proposed activity on historic and archaeological resources. The RLF Administrator shall work with the SHPO and EDA in cases where the SHPO has recommended actions or has been determined an adverse impact.

- All loan applicants shall be requested to provide information indicating whether or not there was hazardous materials such as EPA listed (see 40 CFR 300), hazard substances, leaking underground storage tanks, asbestos, polychlorinated biphenyls (PCB), or other hazardous materials on site that have been improperly handled and have the potential of endangering public health. If deemed necessary, loan applicants may be required to perform or provide evidence of a Phase I site assessment to identify possible sources of contamination, a Phase II site assessment to test soil and/or groundwater samples, and a Phase III site remediation involving mitigation of applicable contaminants. In cases where there are unresolved site contamination issues, the RLF Administrator shall work with the loan applicant and the appropriate state environmental agency office to resolve these outstanding issues.